

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
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NASHVILLE, TENNESSEE 37202

May 13, 2004

Opinion No. 04-092

Commissioners of City Housing Authority

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**QUESTIONS**

1. Tenn. Code Ann. §§ 13-20-101, *et seq.*, govern the creation and operation of local housing authorities. May a person who is not a resident of a city that created a housing authority and who is not a resident of a jurisdiction in which the housing authority is authorized to undertake a housing project serve as a commissioner of a city housing authority created under this statute?

2. If the answer to Question 1 is no, may an individual who does not meet the residency requirements but has been mistakenly appointed a commissioner continue to serve in that office?

**OPINIONS**

1. No.

2. No, such an individual is not qualified to hold the office and is deemed to have vacated it under Tenn. Code Ann. § 8-48-101.

**ANALYSIS**

This opinion concerns membership on the commission of a city housing authority created under Tenn. Code Ann. §§ 13-20-101, *et seq.* This statutory scheme provides that a city housing authority “shall consist of five (5) commissioners appointed by the mayor . . .” Tenn. Code Ann. § 13-20-408(a). The commission may have seven members in cities of 100,000 or more according to the 1980 federal census or any subsequent federal census. Tenn. Code Ann. § 13-20-408(b). Commissioners serve a five-year term of office after initial staggered terms. Tenn. Code Ann. § 13-20-408(a).

The first question is whether an individual who is not a resident of a city that created a housing authority and who is not a resident of a jurisdiction in which the housing authority is authorized to undertake a housing project may serve as a commissioner of a city housing authority created under this statute. The residence of commissioners is addressed in Tenn. Code Ann. § 13-20-103. Under this statute, a commissioner may be appointed who resides within the authority’s boundaries of operation, or within any additional area where the authority is authorized to undertake

a housing project. Tenn. Code Ann. § 13-20-405(a) describes the boundaries of operation to include the city and the area within ten miles from the city's boundaries. In no event may the boundaries include the whole or a part of any other city nor any area included within the boundaries of another authority. A city housing authority may undertake a project outside its usual boundaries in accordance with Tenn. Code Ann. § 13-20-415. Thus, a commissioner of a city housing authority must reside within the housing authority's jurisdiction. Op. Tenn. Att'y Gen. 99-075 (April 5, 1999). A person who is not a resident of a city that created a housing authority and who is not a resident of a jurisdiction in which the housing authority is authorized to undertake a housing project may not, therefore, serve as a commissioner of a city housing authority created under this statute.

The second question is whether a commissioner who did not, at the time of his or her appointment, and does not now, meet the residency requirements may continue to serve as a city housing commissioner. Under Tenn. Code Ann. § 8-48-101, an office is vacated by the officer ceasing to be a resident of the state, district, circuit, or county for which the incumbent was elected or appointed. Tenn. Code Ann. § 8-48-101(3). This Office has concluded that this statute should be interpreted to apply to city offices. Op. Tenn. Att'y Gen. 83-182 (April 15, 1983). An official has been defined as "an incumbent of a public office, an individual who has been appointed or elected in a manner prescribed by law, who has a designation or title given him by law, and who exercises the functions concerning the public assigned to him by law." *Sitton v. Fulton*, 566 S.W.2d 887, 889 (Tenn. Ct. App. 1978). The position of city housing commissioner is an office within the meaning of this definition and, therefore, under Tenn. Code Ann. § 8-48-101. Further, this Office has concluded that Tenn. Code Ann. § 8-48-101(3) applies where an individual who was never a resident as required for the office is elected to office. Op. Tenn. Att'y Gen. 82-29 (January 13, 1983). For these reasons, an individual who was mistakenly appointed to office without satisfying the residence requirement is deemed to vacate the office under Tenn. Code Ann. § 8-48-101(3).

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